



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kerry Christofanelli
President and CEO
Radiac Abrasives, Inc.
1015 South College Avenue
Salem, Illinois 62881

Re: In the Matter of: Radiac Abrasives, Inc.
Docket No. CAA-05-2014-0042

Dear Mr. Christofanelli:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Radiac Abrasives, Inc., Docket No. CAA-05-2014-0042. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 15 2014.

Pursuant to paragraph 21 of the CAFO, Radiac Abrasives, Inc. must pay the civil penalty within 30 days of AUG 15 2014. Your electronic funds transfer must display the case name and case docket number CAA-05-2014-0042.

Please direct any questions regarding this case to Eaton Weiler, Associate Regional Counsel, at (312) 886-6041.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank", is written over a horizontal line.

Nathan A. Frank
Air Enforcement and Compliance Assurance Section,
(IL/IN)

Enclosure

cc: Regional Hearing Clerk/E-19J
Regional Judicial Officer/C-14J
Eaton Weiler/C-14J
Eric Jones, IEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Radiac Abrasives, Inc.
Salem, Illinois,**

Respondent.

) **Docket No. CAA-05-2014-0042**
)

) **Proceeding to Assess a Civil Penalty**
) **Under Section 113(d) of the Clean Air Act,**
) **42 U.S.C. § 7413(d)**

RECEIVED
AUG 15 2014

**Consent Agreement and Final Order REGIONAL HEARING CLERK
USEPA
Preliminary Statement REGION 5**

1. This is an administrative action commenced and included under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Radiac Abrasives, Inc. (Radiac), a corporation doing business in Illinois.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations and the legal allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO for purposes of this CAFO and its enforcement, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. May 31, 1972, EPA approved Illinois Pollution Control Board (IPCB) Rules 101 and 102 as part of the federally-enforceable state implementation plan (SIP) for the State of Illinois. 37 *Fed. Reg.* 10,842. IPCB Rules 101 and 102 has have been recodified at 35 Illinois Administrative Code (Ill. Admin. Code) §§ 201.102 and 201.141, respectively.

10. The Illinois SIP at 35 Ill. Admin. Code § 201.141 provides, in pertinent part, that no person shall cause or threaten or allow the discharge or emission of any contaminant into the environment so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution.

11. The Illinois SIP at 35 Ill. Admin. Code § 201.102 defines “air pollution” as the presence in the atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

12. On April 26, 2011, EPA approved 35 Ill. Admin. Code § 211.7150 as part of the federally-enforceable Illinois SIP. 76 *Fed. Reg.* 23,196. Under 35 Ill. Admin. Code § 211.7150, volatile organic compound (VOC) means, *inter alia*, any compound of carbon that participates in

atmospheric photochemical reactions, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

13. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for Clean Air Act violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

14. Radiac owns and operates a bonded abrasives manufacturing facility at 1015 South College Avenue, Salem, Illinois (the Salem Facility).

15. The Salem Facility includes kilns and ovens, which Radiac operates as part of the abrasives manufacturing process. Abrasives are dried in the ovens and cured in the kilns.

16. At the Salem Facility, Radiac uses naphthalene as raw material to manufacture abrasives. During drying and curing, the ovens and kilns emit the naphthalene contained in the abrasives.

17. Naphthalene constitutes a VOC within the meaning of 35 Ill. Admin. Code § 211.7150.

18. Radiac caused or allowed emissions of naphthalene and other VOCs into the environment from its Salem Facility so as, either alone or in combination with the contaminants from other sources, to cause air pollution, within the meaning of 35 Ill. Admin. Code § 201.102, in violation of 35 Ill. Admin. Code § 201.141.

Compliance

19. Respondent represents and certifies that it is on a schedule to achieve compliance with the requirements that formed the basis of the allegations of this CAFO no later than August

16, 2015. In order to achieve and maintain compliance, Respondent has agreed to the terms of an administrative compliance order under Section 113(a) of the Act signed by Respondent (Order) at the same time as this CAFO.

Civil Penalty

20. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and the agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$108,000.

21. Within 30 days after the effective date of this CAFO, Respondent must pay a \$108,000 civil penalty by ACH electronic funds transfer, payable to "Treasurer, United States of America," by using the following information:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, Respondent will state Respondent's name, the docket number of this CAFO and the billing document number.

22. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Eaton Weiler (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

23. This civil penalty is not deductible for federal tax purposes.

24. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under Paragraph 21, below, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

25. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

26. Respondent must complete supplemental environmental projects (SEP) designed to protect public health by developing a porous vitrified segment product without the use of

naphthalene as a pore former. This product would replace existing porous segments containing naphthalene and would have to perform the same as existing porous segments. The project would utilize resources from an outside source such as a consulting firm, R&D group, or require a contract engineer for an extended period of time.

27. Respondent must complete the SEPs as follows:

- a. Determine a list of possible alternative pore formers. These may be current materials in-house or a totally new pore former material;
- b. Evaluate alternative pore formers in lab to determine the most viable alternatives and narrow down to three possibilities. This would involve making lab prototypes and testing for mix consistency, green strength, forming pressure, stability during fire, fired density, abrasive blast hardness, tensile strength, etc. and comparing to standard;
- c. Finalize environmental impact studies to determine if alternative pore formers pose any negative environmental impact from VOM, particulate, work place exposure, etc.;
- d. Field testing of segments at customers to determine grind performance as compared to current product with naphthalene. This would require testing at a minimum of ten customers with three rounds of testing each. Radiac personnel would be required to be present and monitor all testing and document results;
- e. Evaluate field test data to determine best performing pore former material and determine if it performs equal or better to that of naphthalene;
- f. Reformulation of product and implementation to utilize alternate pore formers which are not listed as a Hazardous Air Pollutant in Section 112 of the Clean Air Act;
- g. Naphthalene usage in the vitrified segment products shall be reduced by 10 percent from the naphthalene used for all vitrified segment products at the Salem facility in calendar year 2013.

28. Respondent must spend at least \$95,000 to fund the projects identified in

Paragraph 27.

29. Respondent certifies as follows:

I certify that Radiac is not required to perform or develop the SEPs by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Radiac has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action.

I certify that Radiac is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEPs. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

30. Within 15 days of the date that the final SEP is completed, but in no event later than August 16, 2016, Respondent must submit a SEP completion report to EPA. This report must contain a separate section for each SEP, and within each section, the report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any problems executing the SEP and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

31. Respondent must submit the SEP completion report from Paragraph 30 by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 22, above.

32. Respondent must maintain copies of research, data and other supporting documentation for the SEP completion report, and Respondent must provide such materials to EPA within 7 days of EPA's request for the materials.

33. In the SEP completion report, Respondent must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

34. Following receipt of the SEP completion report described in Paragraph 33, above, EPA must notify Respondent in writing that

- a. It has satisfactorily completed the SEPs and the SEP report;
- b. There are deficiencies in the SEPs as completed or in the SEP report, and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEPs or the SEP report, and EPA will seek stipulated penalties under Paragraph 36.

35. If EPA exercises option b in Paragraph 34, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any reasonable requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 36, below.

36. If Respondent violates any requirement of this CAFO relating to the SEPs, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in Subparagraph b, below, if Respondent did not complete the SEPs satisfactorily according to the requirements of this CAFO, Respondent must pay a penalty of \$95,000 (in addition to the civil penalty at Paragraph \$108,000).
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent (i) made good faith and timely efforts to complete the SEP and (ii) certified, with supporting documents, that it spent at least 90 percent of the amount set forth in Paragraph 36a, above, Respondent will not be liable for a stipulated penalty under Subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 36, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and \$95,000.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay stipulated penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$200	1 st through 14 th day
\$400	15 th through 30 th day
\$600	31 st day and beyond

37. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

38. Respondent must pay any stipulated penalties under Paragraph 36 within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in Paragraph 21, above, and will pay interest and nonpayment penalties on any overdue amounts.

39. Any public statement that Respondent makes referring to the SEP must include the following language: "Radiac Abrasives, Inc. undertook this project under the settlement of

the United States Environmental Protection Agency's enforcement action against Radiac Abrasives, Inc. for an alleged violation of the Clean Air Act."

40. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify EPA according to this Paragraph, Respondent will not receive an extension of time to complete the SEP.
- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under Subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

41. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violation alleged in this CAFO.

43. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

44. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in Paragraph 43, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that it is on a schedule to comply fully with the Act and the Illinois SIP under the terms of the Order referenced in Paragraph 19.

46. This CAFO constitutes an "enforcement response," as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

47. The terms of this CAFO bind Respondent, its successors and assigns.

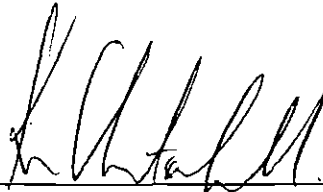
48. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorney's fees in this action.

50. This CAFO and the Order constitute the entire agreement between the parties.

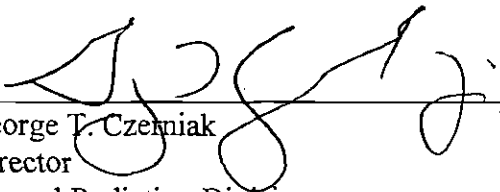
Radiac Abrasives, Inc., Respondent

Aug 14, 2014
Date


Kerry Christofanelli
President and CEO
Radiac Abrasives, Inc.

United States Environmental Protection Agency, Complainant

8/15/14
Date

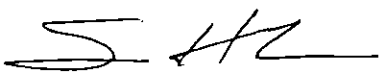

George T. Czerniak
Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Radiac Abrasives, Inc.
Docket No.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8-15-2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
In the Matter of: Radiac Abrasives, Inc.
Docket No. CAA-05-2014-0042**

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2014-0042 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Kerry Christofanelli
President and CEO
Radiac Abrasives, Inc.
1015 South College Avenue
Salem, Illinois 62881

7011 1150 000 2639 3045

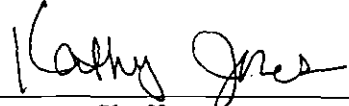
I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Eric Jones, Manager
Compliance Unit
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794

On the 15 day of August 2014.



Loretta Shaffer
Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER:

7011 1150 000 2639 3045